



## STATE OF ILLINOIS

### HUMAN RIGHTS COMMISSION

IN THE MATTER OF )

Illinois Department of Human Rights, )  
Complainant )

and )

Glenwood Resort Owners Association, )  
Respondent )

CHARGE NO.: 1998 CH0343  
EEOC NO.:  
ALS NO.: 10666

### RECOMMENDED ORDER AND DECISION

This matter comes before the Commission on Complainant Illinois Department of Human Rights' ("Department") Motion to Dismiss ("Motion"), filed on May 21, 2002. The remaining Respondent has indicated it has no objection to the Motion and no prior party has indicated any interest in responding to the Motion. It was taken under advisement for decision by order entered on July 11, 2002.

#### Statement of the Case

An extensive history of this case is found in my order of March 22, 2002, which is attached and incorporated in this Recommended Order and Decision (ROD) insofar as it recommends the dismissal of David Goldman, Charles Mangold and Clifton Rampaul as parties respondent, and will not be repeated here. A schedule for the submission of a joint pre-hearing memorandum was set in the order of March 22, 2002, and the final status hearing for this matter was scheduled for June 25, 2002. However, on April 2, 2002, the Department filed a motion to reconsider the order of March 22<sup>nd</sup>, or to certify questions for interlocutory appeal. Complainants Mose and Sandra Avalos both joined in the Department's motion and filed their own motion to reconsider on April 5, 2002. These motions were denied on April 11, 2002.

Then, on May 21, 2002, the Department filed the present Motion, citing Section 5300.730 of the Commission's procedural rules as authority for doing so. On May 30, 2002, the Complainants Avalos filed a motion for voluntary dismissal pursuant to Section 5300.780 of the Commission's procedural rules (*the difference between Rules 730 and 780 and the subsequent impact on the procedural history of this case will be discussed further below*). The Department and counsel for the Complainants Avalos appeared at the regular motion call on June 13, 2002 in accord with the notices filed with their motions. No one appeared for Respondent Glenwood Resort Owners Association ("GROA"). I indicated to those who appeared that I believed there was a basis upon which this matter could be settled that would represent a positive outcome for all of the remaining parties and that although I ultimately could not decline to grant the Avalos's motion for voluntary dismissal, I would enter and continue the motions for 28 days to enable all of the parties to engage in preliminary discussions regarding settlement. I further indicated that there might be a basis upon which the Motion could be denied, but I declined to definitively rule on it until the settlement

discussions were held and I had an opportunity to consider the Motion in greater detail. A status hearing regarding the settlement was scheduled for July 11, 2002.

On July 11, 2002, the parties appeared before me and indicated that a settlement was not possible. The motion for voluntary dismissal filed by the Complainants Avalos was granted as required by Section 5300.780 of the Commission's Rules of Procedure and the present Motion was taken under advisement for decision, with the ruling to issue by mail. Therefore, the posture of this case as this ROD is being written is that the only remaining "complainant" is the Department and the only remaining Respondent is the GROA.

### **Findings of Fact**

No findings of fact are required for this Recommended Order in that the Department's Motion only presents a legal issue that is not dependent on factual determinations for its resolution.

### **Conclusions of Law**

1. The Commission has jurisdiction over the parties and subject matter of this action.
2. In actions filed under Article 3 – Real Estate Transactions of the Illinois Human Rights Act, the Department is the only required, necessary party complainant, with the explicit responsibility to "seek appropriate relief for the complainant (*i.e.*, alleged victim of discrimination) and vindication of the public interest." (parenthetical insert added). 775 ILCS 5/8B-102(H)(1). The Department is not required to fulfill this role in any other category of cases under the Act.
3. To obtain dismissal of a complaint filed under Article 3, the Department must show that it will not be able to seek relief for the complainant or vindicate the public interest, or both. Consequently, it is inappropriate for the Department to utilize the voluntary dismissal mechanism available under Commission Procedural Rule 5300.780 if it determines that, in good faith, it will not be able to fulfill its statutory responsibility. A motion to dismiss outlining the factors contributing to this determination, as utilized by the Department in this case, is the proper vehicle for presenting this information to the Commission and the other parties.
4. In the Motion presently under consideration, the Department has presented sufficient information to establish that it is not now able to seek relief for the complainant/victim or to vindicate the public interest in this matter. Therefore, it is recommended that this case be dismissed with prejudice.

### **Discussion**

At the motion call on July 11<sup>th</sup>, all remaining parties were represented by counsel. Counsel for GROA indicated that no settlement was possible. Subsequently, an order was entered granting the Avalos's motion for voluntary dismissal and taking the Department's Motion under advisement. The latter portion of the order was entered over the strenuous objection of GROA's counsel who asserted that I had no discretion with regard to granting the Motion. In support of this contention, counsel cited Section 5300.780 of the Commission's procedural rules, which is concerned with motions for voluntary dismissal. He also cited a section of the Code of Civil Procedure, which I assume to be the provision relating to the voluntary dismissal of civil cases in the circuit court. 735

ILCS 5/2-1009(a). I would note that the Department, the movant of the instant Motion, did not object to my stated intention of taking the Motion under advisement for decision.

Before proceeding further, it is necessary to examine in greater detail the role of the Department in this case, and all proceedings brought under Article 3 of the Illinois Human Rights Act (“HRA”). 775 ILCS 5/3-101, *et seq.* Section 8B-102(H)(1) of the HRA states in full:

(1) The Department (of Human Rights) and the respondent shall be parties in hearings under this Article. The Department shall seek appropriate relief for the complainant (victim of alleged discrimination) and vindication of the public interest. Any complainant(/alleged victim) may intervene as a party. All parties have the right to examine and cross-examine witnesses. *(Parenthetical inserts added)*

While the Department is given the opportunity to intervene for specific, limited purposes in other types of cases brought before the Commission, *e.g.*, to respond to certain motions filed by the named parties, Article 3 cases are the only cases in which the Department is designated not just as a party but as the primary party in interest. The alleged victim, the complainant, “may intervene.” The plain language of Section 8B(H)(1) makes it clear that the Department must be a party to an Article 3 case and that it can proceed in the absence of the complainant ever becoming a party. The Department is mandated both to “seek appropriate relief” for the complainant and to obtain “vindication of the public interest.” The complainant need not ever become a party for the Department to carry out its responsibility under this Section.

The mandated responsibility of the Department to proceed on behalf of both the complainant and the public interest puts it in a unique position. It is not a party in the same sense as that found in other cases brought under the HRA because it is not the direct “victim” of the alleged prohibited activity of a respondent as are the named complainant-parties in those cases. Those complainants and respondents are only required to prosecute their cases on their own behalf; vindication of the public interest occurs after a good faith effort is made by the parties to prosecute and defend the case, and a result is entered as the final order of the Commission. If the finding is in favor of the complainant, the Commission will enter an award that will make the complainant whole, including any financial loss attributed to the unlawful behavior of the respondent.

In Article 3 cases, an award in favor of the complainant-victim may include only a minimal monetary component, or none at all, in that the Commission is only permitted to award “actual damages” to a prevailing complainant. Financial loss on the part of the Article 3 complainant-victim will often not exist, or be very minimal. The legislature recognized that this can be a disincentive for individual complainant-victims to proceed with the prosecution of their cases. But the maintenance of an open and discrimination-free real estate market is of such importance to the public welfare that the legislature specified that the Department itself will move forward with cases under Article 3 whether or not the complainant-victim wishes to be a party or not. Further, only in Article 3 cases can a respondent found guilty of discriminatory behavior under the HRA be subjected to payment of a civil penalty to the State of Illinois “in an amount not exceeding \$10,000” for a first offense, and up to \$25,000 or \$50,000 if there are previous findings of such conduct within specified periods of time prior to a current finding. 775 ILCS 5/8B-104(C).

This added responsibility on the shoulders of the Department distinguishes it from a complainant-victim whose comparative interest in a case is personal and private. When the interest of a complainant is personal and private, the Commission’s procedural rule 5300.780 recognizes

that there should be an unfettered right for that party to obtain dismissal of the case. In practice, the Rule 5300.780 "motion for voluntary dismissal" is most often submitted when a settlement between the parties is reached. But the rule is not limited to settlement by its terms and can be invoked by a complainant for any reason or no reason. It is this rule that is analogous to Section 5/2-1009(a) of the Code of Civil Procedure, with both rules including the mandatory requirement that the judge/ALJ grant a motion invoking either rule.

However, there are some significant differences. When a Rule 5300.780 motion for voluntary dismissal is granted, the case is dismissed "with prejudice." The Commission loses all jurisdiction over the subject matter of the case and the parties. In contrast, a party obtaining a dismissal under Section 5/2-1009 can subsequently re-file the matter at least once. By its terms, Rule 5300.780 can be invoked at any time during the pendency of the case; Section 5/2-1009 can only be asserted "before trial or hearing begins." Likewise, a decision on a motion filed under Section 5/2-1009 can be deferred if another dispositive motion (e.g., motion for summary judgment) is pending, and there can be significant adverse consequences if it is found that the Section 5/2-1009(a) motion was filed to thwart the discovery process in the case. There are no similar consequences attached to a Section 5300.780 motion for voluntary dismissal.

In this case, the Department, recognizing its special burden, filed the Motion under Section 5300.730. Most often, it is respondents that file motions to dismiss under this rule. Such motions, as distinguished from motions for summary decision, usually deal with jurisdictional and other technical or procedural bases for dismissal of a complaint. But, in light of the discussion above, it is also appropriate for the Department, as a named party complainant with a specially defined role in the case, to seek dismissal of a case utilizing this provision of the rules. The Department must establish that it can no longer meet its responsibility of seeking relief for the complainant-victim and vindicating the public interest.

In the present Motion, the Department notes that the previous individual respondents, who were the members of the GROA board who allegedly engaged in the discriminatory practices specified in the complaint, are no longer parties to this case and cannot be subjected to an award by the Commission. Thus, the public interest in sanctioning the conduct of these individuals, if the case against them ultimately was proven, cannot be satisfied. Therefore, I recommend that this case now be dismissed with prejudice.

### **Recommendation**

It is recommended that the Commission affirm the dismissal of Respondents David Goldman, Clifton Rampaul and Charles Mangold as provided in my order of March 22, 2002, which is attached and made a part of this recommended order, and that the amended complaint and underlying charge in this case be dismissed with prejudice for the reasons stated above in this recommended order.

HUMAN RIGHTS COMMISSION

ENTERED:

July 19, 2002

BY: \_\_\_\_\_  
DAVID J. BRENT  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION



**Service List for Avalos #10666 as of 7/##/02:**

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**Serve on previous parties as well?**